

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

PRESTON KYLE COCKERELL,

Plaintiff,

v.

CIV 12-0658 RB/KBM

MAJOR MORRIS,
SANDRA HOPKINS, and
ROSE KEATON,

Defendants.

ORDER TO FILE A *MARTINEZ* REPORT

This *pro se* prisoner civil rights matter is before the Court *sua sponte*. As of early December 2012, all of the remaining remaining defendants answered, but, to-date, they have not filed dispositive motions. *See Docs. 20, 25, 26*. As presiding District Judge Brack noted in an earlier opinion,

The complaint raises claims under the Eighth and Fourteenth Amendments. Plaintiff alleges that his “entire pod was fogged out with a pepper fogger.” The chemicals caused him serious respiratory and skin injuries, in part because officers refused to allow the inmates to wash off the spray. Prison medical staff allegedly failed to provide treatment for Plaintiff’s injuries. Plaintiff also asserts that Defendant Corrections Department failed to investigate prior abuses and to provide proper training. For relief, the complaint asks for damages and certain equitable relief.

Doc. 15 at 2.

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order

Defendants to investigate the incident or incidents underlying Plaintiff's lawsuit and submit a report of her investigation in order to develop a factual or a legal basis for determining whether a prisoner plaintiff has a meritorious claim. *See, e.g., Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987). A *Martinez* Report may be used in a variety of contexts, including motion for summary judgment or *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set forth in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Wherefore,

IT IS HEREBY ORDERED that Defendants file *Martinez* Reports in accordance with the instructions below:

1. Defendants may file a joint *Martinez* Report, if they wish. The comprehensive *Martinez* Report(s) shall address all of Plaintiff's allegations and should include, but is not limited to: whether documents or other records pertaining to the events exist; and whether prison policies or regulations address the situation;
2. If documents and records do exist, Defendants shall include copies of them as attachments to the *Martinez* Report. Based on prior experience, the Court feels constrained to request that the attachments be arranged in a logical order. Simply copying jumbled prison records will not suffice. The Court also requests that the attachments be Bates-stamped or otherwise be clearly serially marked;
3. Defendants must provide affidavits to properly authenticate submitted documents, and may also submit other affidavits in support of the *Martinez* Report;
4. The submission of documents alone shall not be considered in compliance with this Order. Defendants are expected to also prepare the "report" portion of the *Martinez* Report that discusses the claims and the submissions that relate to those claims;

5. The Court is aware that materials contained in corrections files may be sensitive and that there may be valid reasons for keeping such information secret. As such, Defendants may redact confidential portions of documents submitted with the *Martinez* Report and provide that version to Plaintiff. Alternatively, they may request that Plaintiff not be permitted to review certain portions of the *Martinez* Report and its attachments. If so, Defendants must make their objections to the Court fourteen (14) days prior to the *Martinez* Report filing and service date below. The entire *Martinez* Report must be submitted along with the objections, both under seal, to the Court for ruling;
6. Given the detail required above, the Court will give ample time for Defendants to accomplish this task. They shall file and serve their *Martinez* Report(s) no later than Friday, February 8, 2013;
7. Plaintiff shall file and serve his response to the *Martinez* Report(s) no later than Friday, March 8, 2013; and
8. Defendants shall file and serve their reply, if any (and jointly if desired), no later than Friday, March 22, 2013.



UNITED STATES CHIEF MAGISTRATE JUDGE